

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

LUIS J. VILLAFANE-ORTIZ, et. al.

## Plaintiffs

V.

UNITED STATES OF AMERICA

## Defendant

**CIVIL NO. 04-2413 (SEC/GAG)**

## **MEMORANDUM OPINION AND ORDER**

9       Defendant's *Motion to Dismiss and/or For Summary Judgment* (Docket No. 25) is hereby  
10 granted pursuant to Fed. R. Civ. P. 56 (c), as there lie no genuine issues of material fact in the  
11 record. First Circuit precedent, specifically, Rodríguez v. United States, 54 F. 3d 41 (1<sup>st</sup> Cir. 1995),  
12 governs the Court's ruling. Assuming that the investigation leading to plaintiff's arrest was  
13 negligent, the United States is entitled to assert the conditional privilege accorded arrests effected  
14 pursuant to a valid warrant. Id. at 45, 47-48. There is no dispute here as to the fact that the arrest  
15 warrant named Luis Villafaña [Rivera] as the arrestee. Plaintiff's name is Luis Villafaña [Ortíz].  
During the investigation, DEA agents obtained an address for Villafaña Rivera, who could not be  
found at the same. See Defendant's Statement of Uncontested Facts ¶6 (Docket No. 26).  
Subsequently, the agents went back to the Port Authority Security office, where a supervisor  
provided them with the address of plaintiff Villafaña Ortiz. See id at ¶7. Based on this new  
information, the DEA agents executed the arrest warrant. See id at ¶8. None of the above facts are  
materially contested by plaintiff.

16        Conditional Privilege lies where (1) plaintiff was “sufficiently named” in the arrest warrant,  
17 and, (2) the arresting officers reasonably believed he was “the person intended” in the warrant. The  
18 first prong is met. Despite a different second surname, both individuals are named *“Luis Villaña”*.  
19 The second prong is also met. Here, the arresting officers executed the arrest warrant at the address  
20 provided by the airport supervisory personnel. More so, a Luis Villaña, the plaintiff, indeed  
resided at said address. The fact that the arresting agents did not, at the time, carry a photograph is  
inconsequential. While the same could have certainly aided the agents in the performance of their  
task, sufficient information existed notwithstanding for the arresting agents to reasonably assume  
plaintiff was the person named in the arrest warrant.

21 In addition, based on the uncontested facts discussed above, the discretionary function  
22 exception of the FTCA bars the plaintiff's claims insofar these are grounded on a theory of negligent  
23 investigation. See Nogueras Cartagena v. United States, 172 F. Supp. 2d 296, 317-318 (D.P.R.  
2001). Otherwise, the Court, on its own hindsight would be telling the DEA agents how to  
investigate their cases.

24 Because, co-plaintiff's claims are derivative to that of plaintiff, these are precluded as well.  
Accordingly, this case is hereby dismissed in its entirety. Judgment shall be entered accordingly.

25        The Court is extremely cognizant of plaintiff's unfortunate predicament. This is one of those  
26 unfortunate circumstances, however, where the applicable law does not provide a remedy, and  
27 hence, the Court cannot fashion one. Although "it would be inhumane not to feel a sense of outrage  
28 over the [plaintiff's arrest], or a sense of deep sympathy for his family members, . . . the question  
is one of federal law, not one of sympathy." Ramos Piñero v. Commonwealth of Puerto Rico, 2005  
WL 713327 \* 1 (D.P.R.).

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4 **SO ORDERED.**

5 In San Juan, Puerto Rico this 29<sup>th</sup> day of March, 2006.

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1 *Gustavo A. Gelpi*  
2 GUSTAVO A. GELPI  
3 United States Magistrate-Judge